APPEAL NO. 040860
FILED JUNE 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 29, 2004. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a compensable (right knee) injury on _____, and that the claimant had disability from June 11, 2002, through March 30, 2003, "and at no other time."

The claimant appealed, contending that disability continued to February 25, 2004. The respondent/cross-appellant (carrier) appealed, contending that the hearing officer erred in not granting a continuance so that the carrier could call two live witnesses; that the claimant did not sustain a compensable injury; and that the claimant did not have disability. The carrier urges affirmance of the determination that the claimant did not have disability after March 30, 2003. The file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The claimant, a vehicle inspector, testified that she injured her right knee on _____, walking around a vehicle when she hit her right knee on an exposed trailer hitch. The claimant continued working for a few days, reported her injury on June 10, 2002, and sought medical treatment on June 11, 2002. Whether the claimant was released to full duty or only light duty by the doctor is in dispute. The claimant subsequently saw her own doctor (upon referral from her attorney) who took her off work on June 11, 2002, and eventually released her to light duty as of March 31, 2003. A designated doctor diagnosed a right knee contusion and assessed the claimant at maximum medical improvement on December 3, 2003.

The hearing officer determined that the claimant's disability (as defined in Section 401.011(16)) ended on March 31, 2003, when the claimant's treating doctor released her to light duty and by the claimant's own testimony she began looking for work. The hearing officer determined that the claimant was able to obtain and retain employment at her preinjury wage at that time and that determination is supported by the evidence. The claimant's initial doctor had released the claimant to full duty without restrictions on June 11, 2002. A required medical examination (RME) doctor diagnosed a resolved knee contusion, found the right knee had full flexion and extension, all tests were negative with no joint line pain, and "[p]atellar compression generates no pain." The RME doctor opined that all "medical evaluations after 8-8-02 were primarily for administrative and not medical purposes."

The carrier had requested a continuance a few days prior to the CCH when it learned two witnesses would be unable to attend the CCH. The carrier renewed the request at the CCH. The carrier represented that the two witnesses would testify that there was a few days delay after the alleged injury during which the claimant could have reported her injury and did not, although the injury was timely reported pursuant to Section 409.001. We review cases involving rulings on continuances under an abuse-of-discretion standard and the Appeals Panel will not disturb the hearing officer's ruling on a continuance absent an abuse of discretion. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Texas Workers' Compensation Commission Appeal No. 91041, decided December 17, 1991. We find no abuse of discretion.

Regarding the carrier's appeal of the injury and disability determinations, the hearing officer found the claimant's testimony on those issues credible, the carrier's contentions notwithstanding. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I dissent. The majority affirms the hearing officer's determination that the claimant's disability ended on March 30, 2003, as being supported by the evidence. However, in my opinion, the hearing officer erred in ending disability on that date. In his discussion, the hearing officer stated " [Dr. O] released Claimant to return to light-duty work as of March 31, 2003. That release would have permitted claimant to work earning her preinjury wage." There was evidence in the record that would have supported a determination that the claimant had been released to full duty as of March 30, 2003. However, the hearing officer did not so find. As his discussion indicates, the hearing officer believed that the claimant had only been released to light duty as of that date. At that point, the claimant did not have an obligation to look for work with another employer as the hearing officer appears to have found here. Rather, Section 408.103(e) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6) provide a mechanism for an employer to make a bona fide offer of light duty to an injured employee, which was not done in this instance. Indeed, the record reflects that the claimant attempted to return to work with her employer when she was released to light duty and was told that no light duty was available and she would only be permitted to return to work when she had a full-duty release. The evidence in the record reflects that the claimant looked for work when she was released to light duty, despite not having an obligation to do so. On February 26, 2004, the claimant's job search efforts

were successful and she found employment with a different employer. In my view, because the hearing officer determined that the claimant was only released to light duty on March 30, 2003, because the employer did not make a bona fide offer of light duty to the claimant, and because the claimant's search for alternative employment was not successful until February 26, 2004, the hearing officer erred in the determination that the claimant's disability ended on March 30, 2003. I would reverse the determination that the claimant had disability from June 11, 2002, through March 30, 2003, and render a new determination that the claimant had disability from June 11, 2002, through February 25, 2004.

_____

Elaine M. Chaney
Appeals Judge